

REMARKS

Applicant has reviewed the non-final Office Action of November 7, 2007. Claims 34-42 have been cancelled. Claims 43-51 are pending.

Claims 34-42 were rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the enablement requirement. As these claims have been cancelled, this rejection is moot.

Claims 34-51 were rejected under 35 U.S.C. 101 as allegedly claiming the same invention as claims 1-16 and 26-39 of U.S. Patent No. 6,749,804. Applicant traverses the rejection.

As discussed in MPEP § 804(II)(A), a reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent, or vice versa. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). If the answer is yes, then identical subject matter is not present and double patenting has not occurred.

Independent claim 1 of the '804 patent reads:

1. A process for reducing the production of ammonia and odors in an animal habitat containing fecal matter and urine comprising the steps of treating said habitat with an effective amount of trichloromelamine wherein the application of trichloromelamine is at a point in time wherein it can affect the production of ammonia and odors from nitrogen and sulfur bearing compounds as may be present in the habitat, and wherein the concentration of trichloromelamine is from about 100 to about 200 ppm.

As to claim 1, identical subject matter is not present. For example, one can apply trichloromelamine (TCM) such that it affects the production of ammonia and odors without applying so much that the pH of the habitat is lowered to less than 5, as required by instant claim 43. On this point, Applicant notes that ammonia is very basic, having a pK_b of about 4.75. Thus, claim 1 may be literally infringed while claim 43 is not.

Independent claim 26 of the '804 patent reads:

26. A process for sanitizing an animal habitat comprising the steps of treating said habitat with an effective amount of trichloromelamine wherein the application of the trichloromelamine is done in such a manner as to bring the trichloromelamine into contact with a bacteria as may be present in the habitat, and wherein the concentration of trichloromelamine is from about 100 to about 200 ppm.

Again, as to claim 26, identical subject matter is not present. One can apply trichloromelamine (TCM) to contact a bacterium without applying so much that the pH of the habitat is lowered to less than 5, as required by instant claim 43. Thus, claim 26 may be literally infringed while claim 43 is not.

As a result, Applicant submits that the instant claims 43-51 do not recite identical subject matter. Withdrawal of the § 101 rejection based on the '804 patent is requested.

Claims 34-51 were rejected under 35 U.S.C. 101 as allegedly claiming the same invention as claims 1-12 and 20-30 of U.S. Patent No. 6,616,892. Applicant traverses the rejection.

Independent claim 1 of the '892 patent reads:

1. A process for reducing the production of ammonia and odors in an animal habitat containing fecal matter and urine comprising the steps of treating said habitat with an effective amount of trichloromelamine wherein the application of trichloromelamine is at a point in time wherein it can affect the production of ammonia and odors from nitrogen and sulfur bearing compounds as may be present in the habitat.

As to claim 1, identical subject matter is not present. For example, one can apply trichloromelamine (TCM) such that it affects the production of ammonia and odors without applying so much that the pH of the habitat is lowered to less than 5, as required by instant claim 43. Thus, claim 1 may be literally infringed while claim 43 is not.

Independent claim 20 of the '892 patent reads:

20. A process for sanitizing an animal habitat comprising the steps of treating said habitat with an effective amount of trichloromelamine wherein the application of the trichloromelamine is done in such a manner as to bring the trichloromelamine into contact with a bacteria as may be present in the habitat.

Again, as to claim 20, identical subject matter is not present. One can apply trichloromelamine (TCM) to contact a bacterium without applying so much that the pH of the habitat is lowered to less than 5, as required by instant claim 43. Thus, claim 20 may be literally infringed while claim 43 is not.

As a result, Applicant submits that the instant claims 43-51 do not recite identical subject matter. Withdrawal of the § 101 rejection based on the '892 patent is requested.

CONCLUSION

For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 43-51) are now in condition for allowance. Withdrawal of the rejections and issuance of a Notice of Allowance is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he is hereby authorized to call Richard M. Klein, at telephone number 216-861-5582, Cleveland, OH.

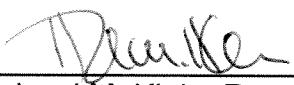
It is believed that no fee is due in conjunction with this response. If, however, it is determined that fees are due, authorization is hereby given for deduction of those fees, other than the issue fees, from Deposit Account No. 06-0308.

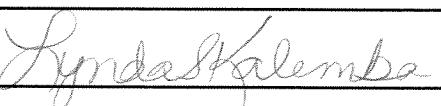
Respectfully submitted,

FAY SHARPE LLP

February 4, 2008

Date


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